

02 or Heil received on a deal?  
03 A. No. Nothing specific, no. I would have  
04 to look at the log book. But offhand, no, I cannot.

33. PAGE 127:08 TO 127:13 (RUNNING 00:00:14.300)

08 Q. Now, the dealer says if McNeilus does not  
09 get the same pricing on this unit as they do when  
10 they buy from you then they will just sell Autocars.  
11 Do you see that?  
12 A. I see that.  
13 Q. Do you know what that refers to?

34. PAGE 127:16 TO 127:18 (RUNNING 00:00:05.300)

16 THE WITNESS: To be honest with  
17 you, I honestly don't know what he was  
18 trying to drive at here.

35. PAGE 136:11 TO 137:01 (RUNNING 00:00:37.400)

11 McNeilus purchases a certain  
12 number of trucks from Mack each year, right?  
13 A. Correct.  
14 Q. Does it order all those trucks at once or  
15 are they ordered over the course of a year?  
16 A. They order over a staggering -- staggered  
17 period of time.  
18 Q. And are the -- is it monthly or quarterly?  
19 Is there some periodic basis on which they order?  
20 A. I am not as privy to the order pattern as,  
21 say, Joe Favia who handles the account would be.  
22 Q. But you do know that it comes in not all  
23 at once?  
24 A. It's definitely not all at once. I am  
00137:01 aware of that.

36. PAGE 140:14 TO 140:22 (RUNNING 00:00:23.100)

14 Q. Is Exhibit-12 an email, sir, that you  
15 wrote?  
16 A. Correct.  
17 Q. August 21, 2002?  
18 A. Correct.  
19 Q. And the legal situation you are  
20 referencing there in the email is the -- this  
21 lawsuit, right?  
22 A. Correct.

37. PAGE 145:04 TO 145:13 (RUNNING 00:00:37.100)

04 Q. Okay. Then you went on to say -- you were  
05 trying to figure out whether Mr. Mack would try to  
06 sell the truck to BFI at a reduced price than normal  
07 BFI discount would suggest, right?  
08 A. That's what I wrote.  
09 Q. Would that be wrong?  
10 A. I believe that would have a negative  
11 impact on the pricing for that customer, yes.  
12 Q. It would result in the customer getting a  
13 lower price, right?

38. PAGE 145:18 TO 149:04 (RUNNING 00:04:21.000)

18 Q. And how would it have a negative impact  
19 then on pricing?  
20 A. Allied BFI buys trucks from many dealers

21 in the Mack network. It's spread throughout the  
22 various regions. They all are equalized to the same  
23 discount. For Allied BFI to be able to buy trucks  
24 at potentially at a lower price here than what they  
00146:01 normally are buying for, in my opinion, that would  
02 raise an inquiry among our other dealers as to -- or  
03 the Mack company themselves as to why can I buy it a  
04 less price here and not anywhere else?

05 Q. That would raise an inquiry potentially by  
06 Allied BFI, correct?

07 A. Correct.

08 Q. And Allied BFI potentially would expect  
09 the other dealers or Mack Corporation to sell at  
10 that reduced price rather than the normal discount?

11 MR. HEEP: Objection to  
12 foundation.

13 - - -

14 BY MR. MACK:

15 Q. Is that what you are saying?

16 A. That is a possibility that I was raising.

17 Q. And then the second thing you said is you  
18 were trying to figure out whether Mr. Yeager was  
19 going to use these to undercut surrounding dealers.

20 Did you mean by undercut that  
21 Mr. Yeager would try to use these stock trucks to  
22 compete against surrounding dealers?

23 A. That's where -- yes.

24 Q. And then try to undercut those dealers on  
00147:01 price?

02 A. Yes.

03 Q. Okay. Is there anything inappropriate  
04 about that, in your mind, sir?

05 A. Not in a situation where they probably  
06 have -- where they are equalizing sales assistance.

07 Q. Would it be inappropriate, in your view,  
08 if Mr. Yeager had a better price than the  
09 surrounding dealers?

10 A. Excuse me. Can you repeat that?

11 Q. Would it be inappropriate, in your view,  
12 if Mr. Yeager received a better price from Mack than  
13 the surrounding dealers?

14 MR. HEEP: Can I clarify? You  
15 are asking about these three trucks, if it  
16 would have been inappropriate if he got a  
17 better price and then for the same three  
18 trucks? And we're not talk about having  
19 an end user, but other dealers had to buy  
20 at a higher price?

21 MR. MACK: I am talking about  
22 what he wrote here.

23 MR. HEEP: Well, I was trying to  
24 get a clarification.

00148:01 THE WITNESS: I am confuse by  
02 the question. Sorry.

03 - - -

04 BY MR. MACK:

05 Q. Would it be inappropriate, sir, if Mr.  
06 Yeager got these three trucks from Mack at a reduced  
07 discount and then that discount was not made  
08 available to other dealers to compete against Mr.  
09 Yeager?

10 A. Yes. Yes.

11 Q. And by the same token, it would be  
12 inappropriate if dealers surrounding Mr. Yeager got  
13 a discount that Mr. Yeager did not receive when he  
14 was trying to compete against them, correct?

15 A. If Mr. Yeager was not asking for an  
16 equalizing sales assistance -- let me backtrack.  
17 Just please repeat the question.

18 Q. Sure. Read back

19 - - -

20 (Whereupon, the preceding portion of  
21 testimony was read back by the court  
22 reporter as follows:

23 "Q.And by the same token, it would be  
24 inappropriate if dealers surrounding Mr.  
00149:01 Yeager got a discount that Mr. Yeager did  
02 not receive when he was trying to compete  
03 against them, correct?"

04 THE WITNESS: Yes.

39. PAGE 151:19 TO 155:02 (RUNNING 00:03:19.000)

19 Have you ever seen Exhibit-14  
20 before?

21 A. Probably through corresponding through  
22 Pepper Hamilton.

23 Q. Okay. This involves a customer that Mr.  
24 Yeager was attempting to quote Parrish Leasing?

00152:01 A. Yes.

02 Q. And in the email from Mr. McCafferty he  
03 wrote, sales assistance is pending with Polzer,  
04 currently has been for three days. Do you see that?

05 A. Yes, I do.

06 Q. Do you recall being asked, sir, to delay  
07 the sales assistance on this deal?

08 A. Yes, I was.

09 Q. And you were asked to do that by Mr.  
10 Yellis?

11 MR. HEEP: Objection. I think  
12 you are leading the witness here to  
13 believe that there is -- what you are  
14 talking about is event in October of 2002.  
15 I am just not sure that --

16 MR. MACK: I didn't ask him  
17 about any dates, Jeremy.

18 MR. HEEP: You are asking him --  
19 - - -

20 BY MR. MACK:

21 Q. Turn it over, if it bothers counsel.

22 Let me ask you, do you recall  
23 being asked by Mr. Polzer to delay providing sales  
24 assistance on an account involving Parrish Leasing.

00153:01 MR. HEEP: That is Mr. Polzer?

02 - - -

03 BY MR. MACK:

04 Q. Do you recall being asked by Mr. Yellis?  
05 Thank you.

06 A. Yes, I do.

07 Q. What did Mr. Yellis say to you?

08 A. He told me I forwarded you the Parrish  
09 Leasing deal, please delay sending it back Monday.

10 Q. Did he tell you why he wanted you to  
11 delay?

12 A. Yes, he did.  
 13 Q. Did he tell you that the deal was  
 14 scheduled to close on Saturday?  
 15 A. He thought there was a good chance the  
 16 dealer who traditionally had sold to Parrish Leasing  
 17 would be able to get an order Friday, or that Friday  
 18 or Saturday.  
 19 Q. Did you have any discretion, sir, in that  
 20 instance regarding whether or not you followed what  
 21 Mr. Yellis was suggesting?  
 22 A. Yes, I did.  
 23 Q. Okay. You don't answer to Mr. Yellis; is  
 24 that right?  
 00154:01 A. That's correct.  
 02 Q. You report to Mr. Flaherty?  
 03 A. Correct.  
 04 Q. Did you talk to Mr. Flaherty about it?  
 05 A. No, I did not.  
 06 Q. Okay. You made the decision on your own  
 07 to go along with what Mr. Yellis was suggesting?  
 08 A. Yes, I did.  
 09 Q. And the reason you did that was because  
 10 Mr. Yellis had requested that you do it?  
 11 A. Yes, it was.  
 12 Q. Okay. Did you make a determination of  
 13 whether the reason that Mr. Yellis was giving you  
 14 for delaying providing sales assistance to Mr.  
 15 Yeager was a legitimate one?  
 16 MR. HEEP: Can you repeat that  
 17 question.  
 18 - - -  
 19 BY MR. MACK:  
 20 Q. Did you make a determination of whether  
 21 the reason that Mr. Yellis was giving you for  
 22 waiting until Monday to provide sales assistance to  
 23 Mr. Yeager was a legitimate one?  
 24 A. I made a determination it was probably not  
 00155:01 a legitimate one. But I chose to agree to what Mr.  
 02 Yellis asked.

40. PAGE 155:08 TO 159:18 (RUNNING 00:06:05.000)

08 Q. Mr. Polzer, is this another exchange of  
 09 emails with Mr. Lusty?  
 10 A. This is from -- yes, it is.  
 11 Q. And it involves that same customer,  
 12 Parrish Leasing, right?  
 13 A. Correct.  
 14 Q. Except now we're in July of 2003, right?  
 15 A. Correct.  
 16 Q. And Mr. Lusty was requesting some  
 17 information from you regarding the sales assistance  
 18 that had been approved for Parrish Leasing?  
 19 A. Yes.  
 20 Q. Now, do you know what dealers were  
 21 involved with this?  
 22 A. Dealer D549 VOMACK and dealer D567, Toledo  
 23 Mac.  
 24 Q. And this was a deal for 20 CX 613s, right?  
 00156:01 A. Correct.  
 02 Q. And one of the things that Mr. Lusty asked  
 03 you about was what is the status of volume bonus,

04 right?

05 A. Correct.

06 Q. And you responded to Mr. Lusty's request  
07 by saying that Mack will withhold and pay the volume  
08 bonus after RDN. I don't believe this dealer  
09 qualifies for net bill VB, that is volume bonus, at  
10 the time of invoice because customer would be out of  
11 territory for him. Right?

12 A. That's what I wrote.

13 Q. And that is Mack's policy, right, about  
14 net billing?

15 A. Correct. That is one of the conditions  
16 where we will agree to net bill the volume bonus  
17 upfront.

18 Q. And net billing the volume bonus up front  
19 is the same as net net billing, correct?

20 A. It would arrive to the net net price of  
21 the truck, correct.

22 Q. So in this instance the dealer was not  
23 entitled to have net net pricing because the  
24 customer was out of his territory?

00157:01 A. In my opinion, the dealer always gets the  
02 net net pricing being we had stated earlier there is  
03 no condition by which we would ever permanently  
04 withhold volume bonus, so the credit that represents  
05 volume bonus will eventually be returned to him.

06 So in my opinion the cost of  
07 this truck to the dealer would be the same whether  
08 we net -- the eventual bottom line cost to the  
09 dealer will be the same whether we withheld the  
10 volume bonus or not.

11 Q. There is a little issue of interest, isn't  
12 there, Mr. Polzer?

13 MR. HEEP: Objection to form of  
14 the question.

15 - - -

16 BY MR. MACK:

17 Q. There is a difference of interest?

18 A. That would -- it would necessitate that  
19 there could potentially be a higher floorplan value  
20 for the dealer we did not net volume bonus, which I  
21 guess where you are implying there is a bigger  
22 interest.

23 Q. Well, if the dealer gets -- pays the money  
24 to Mack, okay, the volume bonus, and then Mack  
00158:01 returns it to him several months later, doesn't Mack  
02 collect interest on that amount?

03 A. I would agree with that.

04 Q. Okay. Whereas, if the net net pricing is  
05 done, the dealer doesn't have to pay that 2 percent  
06 to Mack, and then waits several months to get it  
07 back. The dealer can have that money in his own  
08 bank account and collect interest on it, right?

09 A. Sounds logical, yes.

10 Q. And it is Mack's policy that net net  
11 billing is only available if the customer is in the  
12 dealer's area of responsibility, right?

13 A. That is one of the three conditions that  
14 has been in existence for a number of years as to  
15 whether we would net net invoice a dealer.

16 Q. What are the other two conditions?

17 A. It requires one -- of the conditions was

18 we would have to be notified in writing actually 30  
 19 days before placement. So it would have to be  
 20 within his AOR. And I believe the third is it would  
 21 have to be approved by the field authority, the  
 22 regional vice president.

23 Q. Mr. Yellis, in this case?

24 A. In this case, Mr. Yellis.

00159:01 Q. And when you say notify in writing 30 days  
 02 in advance, what do you mean by that?

03 A. The letter of the ruling is that we would  
 04 have to receive written correspondence that the  
 05 dealer is requesting to be net billed, to be net net  
 06 billed the volume bonus, approved by the regional  
 07 vice president, and essentially approved by myself  
 08 30 days -- the ruling is -- I believe it's before  
 09 your placement of invoice. It's one much those  
 10 days.

11 Q. Not 30 day before the sales assistance  
 12 request?

13 A. The sales assistance request is a separate  
 14 issue from that.

15 Q. Okay. In this case, Parrish Leasing was  
 16 not in Mr. Yeager's area of responsibility, right?

17 A. That was my understanding which is why I  
 18 wrote that.

**41. PAGE 160:22 TO 163:05 (RUNNING 00:03:16.400)**

22 Q. The sales assistance forms we've been  
 23 looking at so far today, they don't show net net  
 24 billing unless it's included in the comments, right?

00161:01 A. Correct. That usually is not a part of  
 02 the QTS, the documents we looked at.

03 Q. Went you are trying to equalize -- strike  
 04 that.

05 Since net net billing is never  
 06 available to a dealer selling outside of his AOR,  
 07 when you are dealing with sales assistance requests  
 08 and the issue of equalizing dealers, that's not  
 09 anything that you have to worrying worry about,  
 10 right?

11 MR. HEEP: Objection to form.

12 THE WITNESS: We would not put a  
 13 value on that volume bonus. And if I  
 14 believe what you are trying to tell me, we  
 15 would not put a monetary value on that  
 16 interest that you are talking about and  
 17 increase a sales assistance to a dealer  
 18 not being net net billed.

19 - - -

20 BY MR. MACK:

21 Q. And in fact because Mack's policy is --  
 22 strike that. The AORs don't overlap, right?

23 A. As far as I know. I'm pretty sure they do  
 24 not overlap.

00162:01 Q. And because Mack's policy is that net net  
 02 billing is only available for sales within an AOR by  
 03 the dealer in that AOR, right?

04 A. That is the policy.

05 Q. It's impossible to equalize dealers on net  
 06 net billing under Mack's policies, right?

07 MR. HEEP: Objection to form.

08 THE WITNESS: I guess there is  
 09 some truth to your -- I do not believe  
 10 that -- I do not believe that is what we  
 11 are required to do.

12 - - -

13 BY MR. MACK:

14 Q. That is nothing that you've done, correct?

15 A. Correct.

16 Q. And you have just -- I think you said  
 17 this. I want to make sure we're clear. You have  
 18 never tried to assign a dollar value to the net net  
 19 billing when you sat around -- sat down to determine  
 20 what levels of sales assistance you needed to  
 21 equalize people at?

22 A. That is correct.

23 Q. Do you, sir, have any understanding of the  
 24 reason why net net billing is not available to a  
 00163:01 dealer selling in another dealer's area of  
 02 responsibility?

03 A. Not really.

04 Q. You never asked why we have this policy?

05 A. No.

**42. PAGE 163:11 TO 170:03 (RUNNING 00:06:31.200)**

11 Q. Polzer Exhibit-16 is document that was  
 12 produced to us by counsel in this case. It says Top  
 13 U.S. Mack Retail Sales Ranked by Five Year Total.  
 14 Do you recognize this, sir?

15 A. Yes, I do.

16 Q. And is this a list of Mack's top sales to  
 17 national accounts for the five year time period 1998  
 18 through 2003?

19 A. It is a combination of national accounts  
 20 and the largest dealer fleet customers.

21 Q. Okay. Ryder. That is a Mack national  
 22 account, correct?

23 A. Correct.

24 Q. Waste Management, that is a Mack national  
 00164:01 account, right?

02 A. Currently it is.

03 Q. Okay. Was there any period of time from  
 04 1998 to 2003 that it was not?

05 A. Is it my understanding at one point in  
 06 time, Waste Management may have been handled through  
 07 a dealer. I do not remember when that switch  
 08 occurred.

09 Q. Okay. Was it handled through the Chicago  
 10 subsidiary?

11 A. I believe they were one of the two that  
 12 would have been involved.

13 Q. McNeilus. That is a Mack national  
 14 account, right?

15 A. Correct.

16 Q. UPS?

17 A. National account.

18 Q. Okay. And if we say national account is  
 19 it fair to assume, then, that the number of sales  
 20 here are national account sales numbers?

21 A. Yes.

22 Q. Comcar?

23 A. National account.



24 Q. New York City, national account?  
00165:01 A. Yes.  
02 Q. Can you go down? Republic. Is that a  
03 national account?  
04 A. No, that is dealer fleet account.  
05 Q. Which dealer, do you know?  
06 A. Nextran, Jacksonville.  
07 Q. Okay. BFI?  
08 A. That is a dealer various.  
09 Q. Okay?  
10 A. Fleet sold through various dealers.  
11 Q. Schwing. Is that a national account?  
12 A. No.  
13 Q. That is sold through Mr. Nuss, Rochester?  
14 A. Yes. Yes.  
15 Q. Putzmeister?  
16 A. Dealer.  
17 Q. Dealer. What dealer?  
18 A. Milwaukee Mack.  
19 Q. Mr. Paven?  
20 A. I am sorry. Which one?  
21 Q. Is Milwaukee Mack George Paven? You don't  
22 know?  
23 A. The dealer owner is Roger Creet. I know  
24 George is there. I don't know his official  
00166:01 capacity.  
02 Q. Tyson Foods is Shippley?  
03 A. Correct.  
04 Q. Shippley, are they in -- what part of  
05 Arkansas?  
06 A. They have a small store in Fort Smith. I  
07 believe is Lowell.  
08 Q. Did you say Fort Smith?  
09 A. They have a -- one of there two locations  
10 is Fort Smith. But I think their main operation is,  
11 I believe Lowell.  
12 Q. Penske Truck Leasing. That is a Mack  
13 national account, right?  
14 A. Correct.  
15 Q. Is that Pennsylvania Department of  
16 Transportation?  
17 A. Correct.  
18 Q. Is that a national account?  
19 A. Correct.  
20 Q. McClain Industries, is that a national  
21 account?  
22 A. Yes.  
23 Q. Florida Rock. That's a Nextran account,  
24 right?  
00167:01 A. Correct.  
02 Q. Heil, national account?  
03 A. Correct.  
04 Q. Roadrunner?  
05 A. National account.  
06 Q. Ruan?  
07 A. National account.  
08 Q. Kenan?  
09 A. Dealer, fleet.  
10 Q. What dealer, do you know?  
11 A. At the time it was Tallahassee Mack. Now  
12 they are called Capital Mack.  
13 Q. Lily?



14 A. National account.  
15 Q. Air Products is national, right?  
16 A. No. Dealer.  
17 Q. Allentown Mack?  
18 A. Allentown Mack, yes.  
19 Q. Arnold/New Penn?  
20 A. Dealer.  
21 Q. What dealer?  
22 A. I always get it mixed up between two.  
23 It's either Leicher or Interstate.  
24 Q. Beelman?  
00168:01 A. National account.  
02 Q. U.S. Postal Service, national account?  
03 A. Correct.  
04 Q. McElroy?  
05 A. McElroy, dealer, Gulf Coast.  
06 Q. You are doing pretty good. We made it  
07 through 26. I'm impressed.  
08 A. Now we get to the hard ones, the smaller  
09 ones.  
10 Q. R&J Truck?  
11 A. National account, currently.  
12 Q. Okay.  
13 A. It may have always -- I honestly don't  
14 know the past history. I know it is today.  
15 Q. Okay. Oakley?  
16 A. Dealer through Nextran Orlando.  
17 Q. Matlack?  
18 A. I believe that was a national account.  
19 I'm pretty positive.  
20 Q. Now, Capital Mack, are they part of the  
21 Nextran group?  
22 A. No, they are not.  
23 Q. They are not. DM Bowman?  
24 A. Dealer fleet. I believe that is Leicher  
00169:01 Mack. That could be Interstate. I get DM Bowman  
02 and the other one mixed up. One is Leicher and one  
03 is Interstate.  
04 Q. Okay. Ashford Concrete?  
05 A. I believe they were -- I -- I believe they  
06 were a national account. I -- I don't remember. We  
07 have not sold since 2000.  
08 Q. Okay.  
09 A. They may have bought some through a  
10 dealer. I just don't remember.  
11 Q. Supervalu?  
12 A. National account.  
13 Q. TIC United?  
14 A. I don't have a -- I don't remember.  
15 Q. Okay.  
16 A. I believe national account.  
17 Q. Milwaukee Mack Leasing?  
18 A. I assume that's a dealer. That is a  
19 dealer.  
20 Q. Suntrust Leasing?  
21 A. That would be sold through a dealer.  
22 Q. What dealer?  
23 A. To be honest with you, I am not sure that  
24 this is a buying entity or it is like a financing  
00170:01 operation that becomes the legal owner of the truck.  
02 Q. RDK Truck Sales?  
03 A. That would -- that was a dealer.

43. PAGE 171:02 TO 172:09 (RUNNING 00:01:36.300)

02 Q. ADM trucking?  
 03 A. Dealer.  
 04 Q. McKenzie Tank Lines?  
 05 A. That was also a dealer.  
 06 Q. Do you know what dealer ADM or McKenzie  
 07 is?  
 08 A. ADM is -- I do know it's Central region.  
 09 I just don't remember.  
 10 Q. McKenzie?  
 11 A. McKenzie is sold out of Tallahassee Mack  
 12 or now today Capital Mack.  
 13 Q. Conway Beam leasing?  
 14 A. That would be a dealer. That is the Mack  
 15 leasing system subsidiary of that dealership.  
 16 Q. R&L?  
 17 A. National account.  
 18 Q. Savage?  
 19 A. Dealer, Salt Lake City.  
 20 Q. Transport Services?  
 21 A. Dealer, Chicago Mack?  
 22 Q. ABC Supply Company?  
 23 A. Dealer. It's -- I believe it's Madison.  
 24 It's somebody in Wisconsin, I believe.  
 00172:01 Q. Ready Mixed Concrete?  
 02 A. That is a dealer. I believe that is  
 03 Talsby Mack.  
 04 Q. Shippers Rental Company?  
 05 A. That is a leasing system of a dealer in  
 06 the central region and I believe it's Quincy.  
 07 Q. A duie Pyle, Inc.?  
 08 A. Dealer. I could -- it's the Northeast  
 09 region. I don't know the exact dealer.

44. PAGE 173:18 TO 174:04 (RUNNING 00:00:25.900)

18 Q. Indian River?  
 19 A. Nextran. I'm sorry. Dealer, Nextran  
 20 Tampa.  
 21 Q. Georgia Pacific?  
 22 A. National account.  
 23 Q. NEMF?  
 24 A. New England Motor Freight, national  
 00174:01 account.  
 02 Q. Freight Equipment Leasing?  
 03 A. That is a dealer Pittsburgh Mack or  
 04 otherwise known as Pitt Ohio.

45. PAGE 177:18 TO 181:01 (RUNNING 00:03:37.300)

18 Q. Do you know how McNeilus distributes or  
 19 sells the trucks that it purchases from Mack?  
 20 A. Can I say that with 100 percent certainty?  
 21 No.  
 22 Q. Wouldn't that information, sir, be  
 23 material to making a determination whether or not  
 24 McNeilus was competing with Mack dealers when it  
 00178:01 sells the trucks?  
 02 MR. HEEP: Objection to the use  
 03 of the term material. It's vague. Go  
 04 ahead.  
 05 THE WITNESS: My opinion, no.  
 06 - - -

07 BY MR. MACK:

08 Q. In expressing your opinion on whether or  
09 not McNeilus completes with its Mack dealers, it's  
10 not important for you to know how McNeilus actually  
11 sells the trucks?

12 MR. HEEP: Objection to form.

13 THE WITNESS: Just repeat that  
14 again.

15 - - -

16 (Whereupon, the preceding portion of  
17 testimony was read back by the court  
18 reporter as follows:

19 "Q. In expressing your opinion on  
20 whether or not McNeilus completes with its  
21 Mack dealers, it's not important for you  
22 to know how McNeilus actually sells the  
23 trucks?"

24 - - -

00179:01 BY MR. MACK:

02 Q. What I meant to say was completes with  
03 Mack dealers, not competes with its Mack dealers?

04 A. I will answer, no.

05 Q. Do you know how McClain distributes or  
06 sells the trucks that it purchases from Mack?

07 A. With a hundred percent certainty, no.

08 Q. Do you know how Heil distributes or sells  
09 the trucks that it purchases from Mack?

10 A. With 100 percent certainty, no.

11 Q. If I asked you the same question about  
12 competition and your opinion on competition that I  
13 asked you with respect to McNeilus, if I asked you  
14 that same question for Heil and McClain would your  
15 answer be the same?

16 MR. HEEP: Can you ask what the  
17 question is?

18 MR. MACK: Sure.

19 - - -

20 BY MR. MACK:

21 Q. Let me try is in a compound fashion and  
22 see if I can get this by you. What I mean by  
23 compound is I want to include Heil and McClain in  
24 the same question. If you want me to do it the long  
00180:01 way, we can do it the long way.

02 In expressing an opinion on  
03 whether or not McClain completes with Mack dealers,  
04 is it important for you to know how Mack -- how  
05 McClain sells the products that it purchases from  
06 Mack?

07 A. I will answer no.

08 Q. In expressing an opinion on whether or not  
09 Heil competes with Mack dealers, is it important for  
10 you to know how Heil sells the trucks that it  
11 purchases from Mack?

12 A. I will answer no.

13 Q. Now, do you know where the trucks that  
14 McClain purchases from Mack are invoiced?

15 MR. HEEP: Go ahead.

16 THE WITNESS: Not with a hundred  
17 percent certainty. I do not really see  
18 the ending invoice.

19 - - -

20 BY MR. MACK:

21 Q. And how about Heil?  
 22 A. Not with -- again, I do -- they -- the  
 23 final invoices do not come to me. I will say, I  
 24 have seen some. I can't guarantee that they are all  
 00181:01 invoiced the same way. I do not know.

**46. PAGE 183:06 TO 189:03 (RUNNING 00:08:05.400)**

06 Q. Do you recognize this as being an email to  
 07 you from Mr. Thomas?  
 08 A. Yes.  
 09 Q. Do you recognize any of the handwriting on  
 10 the document, sir?  
 11 A. That -- No, I do not.  
 12 Q. Now, Schwing is not a national account,  
 13 right?  
 14 A. Correct.  
 15 Q. Does Mack have an agreement with Schwing  
 16 regarding the pricing that it will charge Schwing  
 17 for the 2003 model year?  
 18 A. I wouldn't say Mack -- Mack is part of the  
 19 negotiation that the dealer goes through with  
 20 Schwing when they determine what the pricing will be  
 21 for a new model year.  
 22 Q. But Mack is involved and Mack agrees  
 23 upfront that it will charge the dealer a particular  
 24 price for all the trucks the dealer sells to Schwing  
 00184:01 in that year?  
 02 A. Yes. I would say Mack definitely has a  
 03 say into what type of price increase or whatever  
 04 we're willing to do for a new model year.  
 05 Q. Now, how many customers are there like  
 06 this, that you are aware of, sir, where Mack has  
 07 agreed upfront with the dealer that for all sales to  
 08 the dealer -- for all sales by the dealer for that  
 09 customer in a particular year there will be a  
 10 specific level of pricing?  
 11 MR. HEEP: I am sorry to do  
 12 this. But would you mind reading that  
 13 back.  
 14 - - -  
 15 (Whereupon, the preceding portion of  
 16 testimony was read back by the court  
 17 reporter as follows:  
 18 "Q. Now, how many customers are there  
 19 like this, that you are aware of, sir,  
 20 where Mack has agreed upfront with the  
 21 dealer that for all sales to the dealer --  
 22 for all sales by the dealer for that  
 23 customer in a particular year there will  
 24 be a specific level of pricing?")  
 00185:01 - - -  
 02 MR. HEEP: I will object as  
 03 vague and confusing to the extent you are  
 04 restating his prior testimony, I don't  
 05 think it was right.  
 06 THE WITNESS: I would imagine  
 07 there are probably about at least 50 if  
 08 not more accounts where there is a Mack  
 09 representative working with the dealer  
 10 involved in coming up with either a range  
 11 or a specific price for another model year

12 or whatever.  
13 - - -  
14 BY MR. MACK:  
15 Q. DO any of those, sir, involve a dealer  
16 selling to a customer outside his AOR?  
17 A. I would have to go through what I think to  
18 be the list. Offhand, I can't think of one,  
19 offhand.  
20 Q. Okay. Schwing is what dealer?  
21 A. I believe within the Bob Nuss, quote,  
22 empire somewhere in Minnesota.  
23 Q. Are you involved or have you been involved  
24 with each of those approximately 50 customers?  
00186:01 A. Yes.  
02 Q. And what is your involvement with those  
03 negotiations?  
04 A. With the direct negotiations, very little.  
05 What normally happens is the district manager and/or  
06 usually the RVP will call with me and say it's time  
07 to go quote this customer for the next model year.  
08 Or if they want a -- whatever.  
09 Anyway, they would ask my  
10 opinion in most cases as to what type of price  
11 increase we should be trying to get.  
12 Q. If another dealers want to quote one of  
13 those customers and that dealer is from outside the  
14 AOR where the customer is located, is that dealer  
15 equalized with the pricing given as part of these  
16 negotiations?  
17 MR. HEEP: Objection. Vague  
18 and. The clarification that I'm looking  
19 for is are you asking him -- at the time  
20 of the negotiation of the deal itself  
21 would another dealer be equalized? Or are  
22 you asking after the deal was done during  
23 the one year period, whatever, if a dealer  
24 would be able to get that pricing?  
00187:01 MR. MACK: The later.  
02 - - -  
03 BY MR. MACK:  
04 Q. After the deal is done if another dealer  
05 comes along and said -- if another dealer from  
06 outside the AOR comes along and says I want that  
07 pricing, would he get it?  
08 A. What do you mean by deal is done? That  
09 we've come to an agreement on where the price would  
10 be? Or they have actually put an order in?  
11 Q. Let's talk about Schwing.  
12 A. Okay.  
13 Q. Maybe it will be easier if we talk about a  
14 specific customer.  
15 A. Okay.  
16 Q. If another dealer from outside the AOR  
17 which Schwing is located put in a sales request,  
18 sales assistance request to you, would that dealer  
19 be equalized with the pricing that you had given to  
20 Mr. Nuss to sell to Schwing?  
21 A. Yes. That is what we try. I mean, yes,  
22 that is our policy. They should be equalized.  
23 Q. Does the dealer have to supply a letter  
24 from the customer indicating that the customer is  
00188:01 interested in purchasing from that dealer before he

02 is equalized?

03 A. Not -- in virtually all cases, no.

04 Q. You are not aware of that being part of  
05 the requirement to get equalization?

06 A. I am aware it is in place for Toledo Mac  
07 now.

08 Q. Is it in place for any other dealers?

09 A. I -- I do not know.

10 Q. Okay. When did it go in place for Toledo  
11 Mac?

12 A. Once we understood the lawsuit had been  
13 filed.

14 Q. And who put that requirement in place?

15 A. I can only matter there were a bunch of --  
16 a bunch of people were discussing the situation and  
17 that it became a consensus, a way to go.

18 Q. Were you involved in that, Mr. Polzer?

19 A. I believe I was at the meeting where that  
20 was discussed.

21 Q. Did you ever say to Mr. Lusty that by  
22 requiring Mr. Yeager to submit a letter is how we  
23 keep him in his box?

24 MR. HEEP: Objection to form.

00189:01 THE WITNESS: I don't know if I  
02 used those exact words. But I will say I  
03 agree with the sentiment.

47. PAGE 193:22 TO 193:23 (RUNNING 00:00:02.800)

22 Q. Is McNeilus one of those accounts?

23 A. No, it is not.

48. PAGE 203:10 TO 204:24 (RUNNING 00:01:40.600)

10 Q. Let's talk about a dealer. Well, let me  
11 ask you this. Are there any national accounts that  
12 Mack gives free floorplan to?

13 A. We give payment terms.

14 Q. That's what I thought. So let's talk  
15 about a dealer. When Mack -- if Mack would give  
16 free floorplan to a dealer, the dealer would still  
17 have to draw down on his credit line, even though  
18 during the period of time he was receiving the free  
19 floorplan?

20 MR. HEEP: Objection to form and  
21 foundation.

22 THE WITNESS: That may or may  
23 not have been the case. Or is the case.

24 - - -

00204:01 BY MR. MACK:

02 Q. Do you know, are you saying it can differ  
03 from bank to bank?

04 MR. HEEP: Same objection.

05 THE WITNESS: I guess the way I  
06 am thinking what you are asking me in  
07 terms of this -- to restate the question,  
08 yes, as far as drawing down their current  
09 floorplan line. But there were -- there  
10 may have been ways to extend the floorplan  
11 in addition to that, is what I was trying  
12 to get at.

13 - - -

14 BY MR. MACK:

15 Q. Perhaps we'll get do that letter. I think  
 16 I know what you are referring to. Are you referring  
 17 to some assistance that Mack may have given to some  
 18 dealers in early in 2001 and 2002 in connection with  
 19 limits placed on the floorplan?  
 20 A. That's what --  
 21 MR. HEEP: Objection. Vague and  
 22 as to form and foundation.  
 23 THE WITNESS: Yes.  
 24 - - -

49. PAGE 205:02 TO 205:17 (RUNNING 00:00:35.800)

02 Q. For example, Central Indi Mack and Chicago  
 03 Mack received guarantees from Mack so they could  
 04 extend the floorplans, right?  
 05 MR. HEEP: Objection to form and  
 06 vagueness.  
 07 THE WITNESS: I am not aware of  
 08 Central Indiana Mack. But yes to Chicago  
 09 Mack.  
 10 - - -  
 11 BY MR. MACK:  
 12 Q. And that had to do with some trucks or  
 13 significant number of trucks that those dealers --  
 14 essentially Chicago Mack had received on free  
 15 floorplan for Mack, correct?  
 16 MR. HEEP: Objection.  
 17 THE WITNESS: Correct.

50. PAGE 205:23 TO 206:12 (RUNNING 00:00:43.000)

23 Q. When a national account has extended  
 24 payment terms, let's say there are extended payment  
 00206:01 terms of 120 days. That means he doesn't have to --  
 02 that national account doesn't have to pay dollar one  
 03 until the 120th day, correct?  
 04 A. The national account?  
 05 Q. Right.  
 06 A. Needs to pay us by day 120, correct.  
 07 Q. And during the interim there is no draw  
 08 down on his credit line, assuming he has one?  
 09 A. I guess you are asking something  
 10 theoretical.  
 11 Q. Yes, I am.  
 12 A. Okay. I guess theoretically, yes.

51. PAGE 206:18 TO 206:22 (RUNNING 00:00:18.700)

18 Q. Was that also a problem with McNeilus in  
 19 2002?  
 20 A. 2002? I don't know when it stopped  
 21 becoming a problem. But my perception is it's not a  
 22 problem now anymore.

52. PAGE 207:06 TO 208:05 (RUNNING 00:00:54.200)

06 Q. Is this also a problem with McClain?  
 07 MR. HEEP: Objection to  
 08 vagueness.  
 09 THE WITNESS: I am not aware  
 10 that if it was.  
 11 - - -  
 12 BY MR. MACK:  
 13 Q. Are you aware of any other national



14 account customers that this was a problem? And by  
 15 the this, I am referring to what was reported in  
 16 these minutes, other than McNeilus?

17 A. I have limited knowledge that the New York  
 18 City municipal account, there was some delays in  
 19 payment of certain monies.

20 Q. To your knowledge, sir, did make take any  
 21 legal action against McNeilus to collect these past  
 22 due amounts?

23 A. I am not aware of that.

24 Q. To your knowledge, sir, did Mack ever  
 00208:01 charge McNeilus for interest on these past due  
 02 account amounts?

03 A. I just don't remember that. I'm not  
 04 aware.

05 - - -

**53. PAGE 209:08 TO 214:06 (RUNNING 00:06:50.800)**

08 This is an email with McDaniel.  
 09 McDaniel is complaining about a deal lost to  
 10 Schwing, right?

11 A. Yes.

12 Q. And he is raising an issue with you about  
 13 the pricing to Schwing?

14 A. I believe that is part of what he is  
 15 raising here, yes.

16 Q. He is also raising an issue about the  
 17 pricing to McNeilus?

18 A. He refers to selling body companies. If  
 19 that is what you are taking to mean McNeilus by  
 20 name, very possible.

21 Q. Well, he says to you -- and this is -- he  
 22 is the regional vice president for the Southeast  
 23 region of Mack, right?

24 A. Correct.

00210:01 Q. He says to you, Steve if we keep selling  
 02 body companies, Mack needs to upfront equate the  
 03 dealer on sales assistance and avoid the hostile  
 04 exchanges. Correct?

05 A. Correct.

06 Q. Have you ever spoken with him about that  
 07 subject?

08 A. This particular case or --

09 Q. Just general. That general subject?

10 A. Yes.

11 Q. And have any other regional vice  
 12 presidents also expressed to you that they believe  
 13 Mack needed to upfront equate the dealer on sales  
 14 assistance with body companies?

15 A. There have been some that have.

16 Q. Okay.

17 A. And some who have not.

18 Q. Okay. Well, tell me the ones that have?

19 MR. HEEP: You want to know  
 20 which RVPs have?

21 MR. MACK: Yes.

22 THE WITNESS: I believe the RVPs  
 23 that expressed concerned were John Thomas  
 24 in the Southwest region particularly in  
 00211:01 the Texas market. Dennis on a couple of  
 02 occasions, but he has also been one who

03 had said McNeilus is not a competitor on  
 04 other occasions. Mike McNally had --  
 05 excuse me -- he had not complained. And  
 06 Jeff Yellis I'm sure on occasions on  
 07 certain deals.  
 08 - - -  
 09 BY MR. MACK:  
 10 Q. Has expressed concern about competition  
 11 from McNeilus?  
 12 A. Yes.  
 13 Q. And Mr. Favia in his email, which is the  
 14 second email says that he -- the second email on the  
 15 first page -- he tries to stop McNeilus when I can  
 16 when they have 84 percent of the mixer market it's  
 17 swimming with croc's. Do you see that?  
 18 A. Yes.  
 19 Q. Did Mr. Favia send this email to you?  
 20 A. I would have seen that, yes.  
 21 Q. Now in the string of emails, the third  
 22 email is one from you, right?  
 23 A. Correct.  
 24 Q. Are we working backwards here? In other  
 00212:01 words, from a chronology standpoint? I started on  
 02 first page.  
 03 A. Correct.  
 04 Q. Can we tell by looking at the times which  
 05 is the first email, which is the second, and which  
 06 is the third?  
 07 A. It should be the last one on page two.  
 08 Q. It should be the first one?  
 09 A. Excuse me. The last email on page two at  
 10 the bottom of the page, it starts with, Steve, for  
 11 your information MTM is quoting a customer named  
 12 Wayne David? That should have been the first one.  
 13 Q. Who is Joe, there? Joe Favia, correct?  
 14 A. Correct.  
 15 Q. And Mr. Favia sent you an email and said,  
 16 McNeilus is quoting a customer named Wayne David. I  
 17 do not know where they are located but I know they  
 18 are going in with Kenworths and Macks. Please  
 19 advise if Mack customer, right?  
 20 A. Correct.  
 21 Q. Do you know why Mr. Favia would have been  
 22 asking you if Wayne David was a Mack customer?  
 23 A. He would have been -- he would have been  
 24 asking me because there was an informal friendly  
 00213:01 arrangement with McNeilus that we had asked them not  
 02 to target certain accounts as part of our deal.  
 03 Q. And, in fact, you had asked McNeilus to  
 04 keep hands off established Mack dealer business,  
 05 right?  
 06 A. Based on my understanding, I would -- I  
 07 would basically reiterate that sentiment, yes.  
 08 Q. Well, what was your understanding based  
 09 upon?  
 10 A. My -- I -- I believe it's what I said. My  
 11 understanding was we sold trucks direct to McNeilus.  
 12 However, they were -- there were certain -- I should  
 13 say certain accounts. But there were certain  
 14 instances where we did not feel we wanted them  
 15 trying to steal, deal business, or quote certain  
 16 dealer customers.

17 Q. And who told you that?  
 18 A. I believe it would have came in general  
 19 conversations with Joe Favia.  
 20 Q. Anyone else you talked to at Mack about  
 21 that subject?  
 22 A. Not directly. It's possible Joe's  
 23 superior, John Williams, would have overheard that.  
 24 Q. But it certainly was -- when you wrote  
 00214:01 your email, which would be the second email that you  
 02 sent, the one at 9:06 on April 30 of 2003, you  
 03 wrote, as for McNeilus I thought they're supposed to  
 04 keep hands off established Mack dealer business,  
 05 right?  
 06 A. Yes.

54. PAGE 215:07 TO 216:05 (RUNNING 00:00:53.000)

07 Q. Did Mr. Favia identify for you any  
 08 particular Mack accounts that McNeilus was supposed  
 09 to keep its hands off of?  
 10 A. He would not have given me -- no. As far  
 11 as keeping hands off, no.  
 12 Q. Did he use the phrase established Mack  
 13 dealer business, which is the phrase you used in  
 14 your email?  
 15 A. Did he ever use that phrase? I don't  
 16 think. He might have used that.  
 17 Q. But that was your understanding?  
 18 A. Yes.  
 19 MR. HEEP: Wait. Was it his  
 20 understanding that Mr. Favia used that  
 21 phrase or?  
 22 - - -  
 23 BY MR. MACK:  
 24 Q. No. His understanding that the  
 00216:01 arrangement with McNeilus was that they would keep  
 02 their hands off established Mack dealer business?  
 03 A. If it was my understanding?  
 04 Q. Yes, sir.  
 05 A. Yes.

55. PAGE 216:13 TO 217:05 (RUNNING 00:01:06.600)

13 Q. Now, these accounts that McNeilus is  
 14 supposed to keep its hand off of, are those accounts  
 15 where McNeilus is competing with the dealers?  
 16 MR. HEEP: Objection to form and  
 17 foundation.  
 18 THE WITNESS: If it was, I could  
 19 see where they would perceive it to be  
 20 competing if they were competing for a  
 21 truck to be available within a very short  
 22 timeframe.  
 23 - - -  
 24 BY MR. MACK:  
 00217:01 Q. Has Mr. Favia ever told you that he tries  
 02 to stop McNeilus from selling to established Mack  
 03 customers when I can?  
 04 A. I can only go by what he wrote on this  
 05 email.

56. PAGE 221:03 TO 221:08 (RUNNING 00:00:23.100)

03 Q. Did you provide that level of sales

04 assistance in the instance referred to in Polzer  
 05 Exhibit-22?  
 06 A. No, we did not. We had no idea Schwing --  
 07 those trucks from Schwing were part of the  
 08 competition.

57. PAGE 224:04 TO 226:09 (RUNNING 00:03:01.300)

04 Q. And in the third paragraph there is a  
 05 reference to net net net price. Third paragraph,  
 06 fifth line -- fourth line. Sorry.

07 A. When you say, the third break paragraph?

08 Q. Yes.

09 A. I think that dealt with specifically one  
 10 truck that was pulled out of corporate inventory.

11 Q. And my question to you, sir, is what is a  
 12 net net net price?

13 A. Actually, that is actually net net. I  
 14 think I refined the use of those terms over the last  
 15 couple of year.

16 Q. Well, was there some period of time at  
 17 Mack when there was triple net pricing?

18 A. I am not aware of that. That would have  
 19 been in reference tow truck pricing.

20 The only possible thing if there  
 21 is a reference to RDS credit here, and I don't know  
 22 if that may have constituted what the third net was.

23 Q. What it an RDS credit?

24 A. I would say we discontinued that probably  
 00225:01 somewhere in the year either 2001 or 2002. I don't  
 02 know the exact date.

03 But we at Mack corporate  
 04 developed what we thought were good specs,  
 05 pre-engineered specs, so-to-speak, trucks that we  
 06 thought obviously if the dealer orders that same  
 07 engineered spec it is going to save on our  
 08 engineering time to configure a truck.

09 And so we came up with a program  
 10 where we put maybe 15 maybe 20 of these  
 11 pre-engineered type trucks that could have been  
 12 highway, vocational, whatever, and to incentivise a  
 13 dealer to order that in lieu of maybe ordering  
 14 something with all of their individuals bells and  
 15 whistles they wanted, we would give them an  
 16 additional credit.

17 Q. Is that the easy spec program?

18 A. It's similar. Easy spec was -- I would  
 19 call that a semi-engineered. RDS being pretty much  
 20 a completely engineered truck.

21 Q. Were there credits available on easy spec  
 22 trucks?

23 A. Yes, there were.

24 Q. And when was -- was that a credit against  
 00226:01 the purchase price or was that money that was paid  
 02 by the dealer and then returned to the dealer?

03 A. I believe it was a purchased credit. It  
 04 was credit upfront at the time of invoice.

05 Q. Was RDS a credit at invoice or paid to the  
 06 dealer at a regular time?

07 A. In those situations where we recognized  
 08 that it was an RDS it was a credited invoice.

09 - - -

58. PAGE 226:14 TO 226:20 (RUNNING 00:00:27.300)

14 Q. Is Exhibit-24, sir, an email exchange  
 15 between you and Mr. Favia and Mr. Ginter?  
 16 A. Correct.  
 17 Q. And who is Steve Ginter?  
 18 A. Steve Ginter is in our marketing  
 19 department. He is -- his responsibilities involve  
 20 mostly the vocational product development.

59. PAGE 227:04 TO 229:08 (RUNNING 00:03:04.000)

04 Q. And you were taking a look at some  
 05 invoicing on trucks to McNeilus in March, right?  
 06 A. Yes.  
 07 Q. And you became concerned, did you not,  
 08 about the pricing on those trucks to McNeilus?  
 09 A. Yes.  
 10 Q. And you determined that the pricing on  
 11 those trucks to McNeilus was ten to thirteen  
 12 thousand dollars better from a margin standpoint  
 13 than the pricing to the dealers, correct?  
 14 A. No, that is not what I am saying here. My  
 15 concern was that the margin we showed for those  
 16 granite bridge formula, and that was a newer type  
 17 model we had just developed for specific  
 18 applications, the first 13 of those or first one or  
 19 excuse me, maybe all 13 of those we sold showed a  
 20 ten or thirteen thousand dollars worse margin than a  
 21 similar spec RD that we were selling to McNeilus.  
 22 Q. Well, didn't you say that the pricing was  
 23 considerably lower than CVs we invoiced to our  
 24 dealer base?  
 00228:01 A. Excuse me. I did say that. But that is  
 02 not what the margin reference is to.  
 03 Q. Well, did you determine that the pricing  
 04 to McNeilus on these 13 trucks was considerably  
 05 lower than pricing to the dealer base?  
 06 A. I expressed concern that that could be a  
 07 problem, yes.  
 08 Q. And then you said, I know we have -- we  
 09 allow McNeilus to have a little better price than  
 10 our dealers. However, we're talking ten to thirteen  
 11 thousand dollars better from a margin standpoint.  
 12 Right?  
 13 A. That's what I said.  
 14 Q. And I take it that was a truthful  
 15 statement when you made it?  
 16 A. It was truthful in that the margin was ten  
 17 to thirteen thousand dollars lower, yes. At the  
 18 time I first looked at it and fired off the email.  
 19 Q. Okay. Was it also truthful that Mack  
 20 allows McNeilus to have a little better price than  
 21 the dealers?  
 22 A. I think we've established that throughout  
 23 here, today.  
 24 Q. And that's what you were talking about  
 00229:01 there?  
 02 A. Yes.  
 03 Q. And at least in this instance when you  
 04 looked at it on April the 3rd of 2001, the pricing  
 05 to McNeilus on these 13 CVs was -- there was a  
 06 difference of ten thousand to \$13,000 a margin

07 standpoint?  
08 A. Yes.

60. PAGE 229:13 TO 230:10 (RUNNING 00:01:03.600)

13 Q. Well, you said 10 to \$13,000 in the same  
14 sentence that you were talking about the pricing to  
15 the dealers, right?  
16 A. My note to Joe is that --  
17 Q. Could you answer my question, sir?  
18 A. We sold RDs to McNeilus and there was a  
19 net net selling price and that resulted in a margin  
20 of X. We came out with this new type truck, the  
21 Bridge Formula Granite, and we sold some of those to  
22 McNeilus because we wanted them to try and get that  
23 product off the ground particularly in the West  
24 Coast which is where this product was predominantly  
00230:01 made for. And there was a concern that when we sold  
02 them the margin that came back on those reports that  
03 I told you about earlier were significantly lower  
04 from the RD. That means there could be two things  
05 going on: Either we have a selling price problem or  
06 we have a costing problem.  
07 Q. Well, did you determine what it was?  
08 A. Yes.  
09 Q. What was it?  
10 A. A costing problem.

61. PAGE 230:11 TO 231:06 (RUNNING 00:00:41.000)

11 Q. The RDs that Mack sold to McNeilus, were  
12 those sold to McNeilus at a little better price than  
13 the dealers?  
14 MR. HEEP: Objection. Asked and  
15 answered.  
16 THE WITNESS: I believe we sold  
17 those based off of the net net pricing  
18 matrix we had with McNeilus and then came  
19 to some agreement on where we would want  
20 those prices.  
21 I believe it would have been --  
22 it would have been independent of any  
23 pricing we had done with the dealers on  
24 the few dealers who had bought that type  
00231:01 of truck up to then.  
02 - - -  
03 BY MR. MACK:  
04 Q. Regardless whether or not it was  
05 independent, was it better than the dealer's price?  
06 A. Yes.

62. PAGE 233:14 TO 233:18 (RUNNING 00:00:14.100)

14 Q. Was it just these 13 trucks, sir?  
15 A. That is what I was -- when I wrote the  
16 email, that is what I -- that is what I had in front  
17 of me of what we sold McNeilus.  
18 Q. Okay.

63. PAGE 234:09 TO 234:13 (RUNNING 00:00:13.733)

09 Q. Do you consider the pricing that Mack  
10 gives to McNeilus to be information that the dealer  
11 shouldn't know?  
12 A. Yes.